

These are the tentative rulings for civil law and motion matters set for Thursday, June 12, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, June 11, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. Telephone appearances through June 2014 will continue to be governed by the current Local Rules. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0051974 Anchor General Insurance Co. vs. Taylor, Rex Allen Jr.**

The motion to release funds is dropped. No moving papers were filed.

**2. M-CV-0053108 FIA Card Services, N.A. vs. Pavlovsky, Janis S.**

Plaintiff's motion for terminating sanctions is denied. The moving papers fail to establish that defendant's failure to respond to discovery has prejudiced plaintiff's ability to prepare for trial, or that the questions involved are clearly relevant to the issues raised by the pleadings. *See Morgan v. Ransom* (1979) 95 Cal.App.3d 664, 669.

**3. M-CV-0058184 State Farm Mutual Auto Insurance vs. Bustillos, George**

Plaintiff's motion to vacate dismissal is granted. The dismissal entered on December 6, 2013 is vacated. A case management conference for trial setting is set for July 29, 2014 at 11:00 a.m. in Department 40.

**4. M-CV-0058294 Fidelity National Title Co. vs. Johnsrud, John M., et al**

Plaintiff Fidelity National Title Company's motion for order releasing interpleader funds deposited with the court is granted. Funds in the amount of \$9,010 on deposit with the court shall be released per the written settlement agreement between plaintiff and defendant John M.

Johnsrud. Plaintiff is to receive \$4,600 of the interpleaded funds. John M. Johnsrud is to receive \$4,410 of the interpleaded funds.

**5. M-CV-0060842 K & P Ultimate Construction vs. Pryor, Lea L.**

Plaintiff's motion for leave to amend complaint is granted. Plaintiff shall file and serve its first amended complaint by no later than June 27, 2014.

**6. M-CV-0061322 Kelley, Mark vs. Coe, Shannon**

Appearance required on June 12, 2014 at 8:30 a.m. in Department 40.

**7. S-CV-0031091 Secret Ravine Development Co., LLC vs. Sierra View Co., Inc.**

Financial Pacific Insurance Company's motion for leave to intervene on behalf of cross-defendant West Coast Electric Contracting Inc. (erroneously sued as Robert Earl Coons dba West Coast Electric) is granted. Moving party shall file and serve its complaint-in-intervention by no later than June 27, 2014.

**8. S-CV-0031288 Pre/Plastics, Inc. vs. Nexeo Solutions, LLC**

Ruling on Motion to Compel

Plaintiff's motion to compel further responses is denied as moot, as plaintiff admits that amended responses have been served. To the extent plaintiff requests in its reply orders relating to the amended responses, the court declines to rule on such issues, to which defendant Ashland, Inc. has had no opportunity to respond. The parties' respective requests for sanctions are denied.

Ruling on Motion for Leave to File Third Amended Complaint

Plaintiff's motion for leave to file third amended complaint is granted. Plaintiff shall file and serve its third amended complaint by no later than June 27, 2014.

**9. S-CV-0032694 Thompson, Richard D., et al vs. Dela Riva, Angela L., et al**

Plaintiffs' motion to set aside dismissal is granted. The dismissal of this action, entered March 25, 2014, shall be set aside for the sole purpose of permitting judgment to be entered.

If telephonic appearance is requested, plaintiffs' request for telephonic appearance is granted. All telephonic appearances must be arranged through CourtCall. *\*\*Note: Effective July 1, 2014, all telephonic appearances will be governed by Local Rule 20.8. More information regarding this change is available at [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).*

**10. S-CV-0032896 Clark, Amy, et al vs. Fry, Tyler David, et al**

Plaintiffs' motion to compel answers to interrogatories, production of documents and request for monetary sanctions is denied. The declaration in support of the motion is deficient. It references the subject discovery attached as Exhibit A, but no such exhibit is attached. Further, the declaration fails to state that defendant did not respond to the discovery in a timely manner. Accordingly, the purported basis for the motion is not supported by competent evidence.

**11. S-CV-0032904 Schmidley, Valisa vs. Dance Hall Investors, Inc., et al**

The motion to compel arbitration is continued to June 26, 2014 at 8:30 a.m. in Department 40.

**12. S-CV-0033460 County of Placer vs. S.W. Allen, Inc., et al**

The demurrer to the complaint is dropped. No moving papers were filed.

**13. S-CV-0033534 Centex Homes, et al vs. Ad Land Corp.**

The motion for leave to file second amended complaint is continued to July 3, 2014 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**14. S-CV-0033556 Pesola, Anthony vs. Schostag, Alan D., et al**

Defendants' motion to strike plaintiffs' complaint is granted with leave to amend. Plaintiff essentially concedes the merit of defendants' arguments, and submits a proposed amended complaint to cure the noted defects. Plaintiff shall file and serve his first amended complaint by no later than June 27, 2014.

**15. S-CV-0033706 Medcalf, Frank, et al vs. Smith, Richard, et al**

Request for Judicial Notice

Defendants' request for judicial notice is granted.

Ruling on Demurrer to First Amended Complaint

Defendants' demurrer to plaintiffs' first amended complaint is overruled in part, and sustained in part, with leave to amend.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. As such, the allegations in the

pleadings are deemed to be true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structured Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Defendants' demurrer to the original complaint was sustained on the grounds that, as pled, it appeared that each cause of action was barred by the Subdivision Map Act ("SMA") because the underlying agreement purported to divide real property without recording an approved map. The allegations of the first amended complaint sufficiently plead an agreement to transfer a portion of real property back to plaintiffs after appropriate compliance with the SMA. Accordingly, the first cause of action for breach of contract and the fourth cause of action for elder abuse state valid causes of action.

Plaintiffs' second cause of action for constructive trust fails to state a valid cause of action because the property that is alleged to be subject to the constructive trust is not specifically identified. *Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1114.

Plaintiffs' third cause of action for unjust enrichment fails to state a valid cause of action because this claim is pled as a common count, which does not lie where the obligation is for something other than the payment of money. *Weizenkorn v. Lesser* (1953) 40 Cal.2d 778, 793.

Finally, the allegations of the first amended complaint do not disclose on their face that the statute of limitations bars plaintiffs' claims.

#### Ruling on Motion to Strike

Defendants' motion to strike is granted with leave to amend as to plaintiffs' prayer for punitive damages. The complaint does not sufficiently allege facts to support a request for punitive damages. The motion is denied with respect to plaintiffs' prayer for "damages incurred herein in an amount according to proof." Defendants' memorandum of points and authorities does not address this issue, and plaintiffs demonstrate the potential for monetary damages.

#### Leave to Amend

Plaintiffs shall file and serve any amended complaint by no later than July 3, 2014.

#### **16. S-CV-0034068 Walsh, Liliya, et al vs. Federal Nat'l Mortgage Ass'n., et al**

The motion for reconsideration is continued to June 17, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

#### **17. S-CV-0034184 Conrad, Ethan vs. Swanson, April, et al**

#### Ruling on Demurrer to Cross-Complaint

Plaintiff and cross-complainant Ethan Conrad's ("Conrad's") demurrer to cross-complaint is sustained with leave to amend.

Defendant and cross-complainant James King (“King”) asserts a single cause of action in his cross-complaint, for negligence against his former landlord. Generally, a commercial landlord does not owe a duty of care to a tenant to prevent injury to property. *Royal Neckwear Co. v. Century City, Inc.* (1988) 205 Cal.App.3d 1146, 1151-1152; *Rotman v. Maclin Market, Inc.* (1994) 24 Cal.App.4th 1709, 1715. King asserts in his opposition that Conrad assumed a duty of care by promising to increase security after numerous burglaries on the premises. Where a party voluntarily assumes a duty of care by undertaking to protect another, there may be an exception to the rule of non-liability. *Williams v. State of Cal.* (1983) 34 Cal.3d 18, 23. King also contends in his opposition that Conrad failed to disclose material facts affecting the desirability of the property. While such information is not set forth in the complaint, it supports a finding that King should be given leave to amend his complaint to attempt to state a valid cause of action.

Any amended complaint shall be filed and served by no later than July 3, 2014.

#### Ruling on Application for Right to Attach Order

Conrad’s application for right to attach order is denied without prejudice. In light of the ruling on the demurrer, a right to attach order is not warranted at this time, as it has not yet been established whether King can allege valid cross-claims against Conrad which may offset the damages sought by the complaint.

#### **18. T-CV-0001878 Ornelas-Bolanos, Jose Enrique vs. Kettenhofen, Robert M.**

As a preliminary matter, the court notes that plaintiff purports to set forth in his response to separate statement several objections to facts stated in defendants’ separate statement. However, objections must be to evidence, and must be set forth in the proper form. Cal. R. Ct., rule 3.1354(b); *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 8. The court has not considered plaintiff’s objections, which were not submitted as required by the applicable Rules of Court.

Defendant Robert John Kettenhofen’s (“J. Kettenhofen’s”) motion for summary adjudication is granted in part, and denied in part.

A defendant may move for summary adjudication if he contends that there is no merit to one or more causes of action or claims for damages alleged in the complaint. Code Civ. Proc. § 437c(f)(1). A moving defendant has the initial burden of showing that the cause of action or claim for damages has no merit, or there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2). If defendant meets its initial burden, the burden shifts to plaintiff to show the existence of a triable issue of material fact as to the cause of action or defense. Code Civ. Proc. § 437c(p)(2). The trial court views the supporting evidence, and all inferences reasonably drawn therefrom, in the light most favorable to the opposing party. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.

J. Kettenhofen’s motion for summary adjudication is denied with respect to plaintiff’s cause of action for negligent entrustment. Defendant’s burden is to present evidence that would

require a reasonable trier of fact to find that he was entitled to judgment as a matter of law on this cause of action. J. Kettenhofen states that he was aware that as an adult, his son Maxwell Kettenhofen had received moving violations including a citation for driving under the influence, and had his driver's license suspended for a period of time prior to August 2012. (Deft. SSUMF 9, 10.) Based on such facts, J. Kettenhofen does not present evidence that would require a reasonable trier of fact to find that he was entitled to judgment. Accordingly, the burden does not shift to plaintiff to establish a triable issue of material fact.

J. Kettenhofen's motion for summary adjudication is granted with respect to plaintiff's claim for punitive damages. J. Kettenhofen sets forth evidence establishing a complete defense to this claim, in that his actions do not constitute fraudulent, malicious, oppressive or despicable conduct. The burden therefore shifts to plaintiff to establish a triable issue of material fact. Plaintiff fails to meet this burden. Plaintiff submits no admissible evidence in support of his opposition, and sets forth no disputed facts in his opposition to separate statement . Accordingly, summary adjudication of the punitive damages claim is warranted.

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